

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT

FENF, LLC,

Plaintiff,

v.

YOGABODY NATURALS LLC,

Defendant.

CA NO. 16-13483

Honorable

Magistrate Judge

**JURY TRIAL DEMANDED**

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**COMPLAINT FOR TRADEMARK INFRINGEMENT  
AND UNFAIR COMPETITION**

Plaintiff, FenF, LLC, (hereafter “Plaintiff” or “FenF”), by and through their undersigned counsel, hereby bring this Complaint against Defendant YOGABODY Naturals LLC (hereafter “Defendant” or “YOGABODY”). FenF alleges as follows:

**Nature of the Action**

1. This is a civil action for federal trademark infringement and unfair competition. This action is based upon the trademark laws of the United States, Title 15 Chapter 22 of the United States Code.

**The Parties**

2. FenF is a Michigan limited liability company having a place of business located at 8155 Huron River Drive, Dexter, Michigan 48130.

3. On information and belief, YOGABODY is a Wyoming limited liability company having a place of business located at 302 Washington Street #150–6920, San Diego, California 92103.

**Jurisdiction and Venue**

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338, as well as 15 U.S.C. § 1121(a), because this action arises under the federal trademark laws of the United States, Title 15 Chapter 22 of the United States Code.

5. This court has personal jurisdiction over YOGABODY by virtue of the activities Defendant conducts within the State of Michigan. On information and belief, YOGABODY has conducted and continues to conduct business in this judicial district and has engaged in activities related to FenF’s claims of trademark infringement and unfair competition that establish minimum contacts with the State of Michigan, including having committed acts of trademark infringement and unfair competition in this judicial district, and the exercise of personal jurisdiction over YOGABODY is reasonable and fair.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1391(b), (c) and (d).

**Substantive Assertions**

7. FenF sells various foot-therapy products under the name “YogaToes®” that are designed to treat various foot and toe ailments including hammertoes, flat feet, bunions, poor circulation, plantar fasciitis, and crossed toes.

8. FenF sells its YogaToes® line of foot-therapy products through its website ([www.yogapro.com](http://www.yogapro.com)) as well as through other on-line retailers such as amazon.com.

9. At all relevant times since at least December 10, 2002, FenF has been using the trade name YogaToes® in interstate commerce in connection with advertising, marketing, promoting, and selling its YogaToes® products.

10. FenF has acquired value, name and brand recognition, and goodwill in the YogaToes® name as a result of continual and substantial advertising, promotion, and interstate commercial activity related to its YogaToes® products.

11. FenF is the owner by assignment of United States Trademark Registration No. 3,253,636 (“the ’636 registration”) for the mark “YOGA TOES” and has the right to bring a cause of action for infringement of a federally registered trademark. The YOGA TOES mark was registered on June 19, 2007. A true and correct copy of the ’636 registration is attached to this Complaint as Exhibit A.

12. FenF is the owner by assignment of United States Trademark Registration No. 3,430,215 (“the ’215 registration”) for the mark “YOGATOES” and has the right to bring a cause of action for infringement of a federally registered trademark. The YOGATOES mark was registered on May 20, 2008. A true and correct copy of the ’215 registration is attached to this Complaint as Exhibit B.

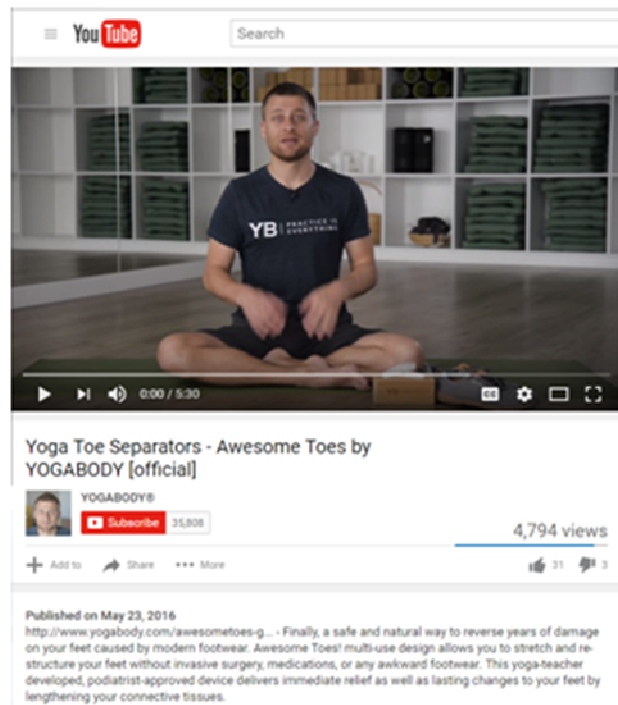
13. Each of the ’636 registration and the ’215 registration has become incontestable under 15 U.S.C. § 1065.

14. YOGABODY does business in the health, wellness, and fitness industry and, as part of its business, markets, promotes, and sells in interstate commerce a corrective foot spacer product under the name “Awesome Toes!” as shown below.



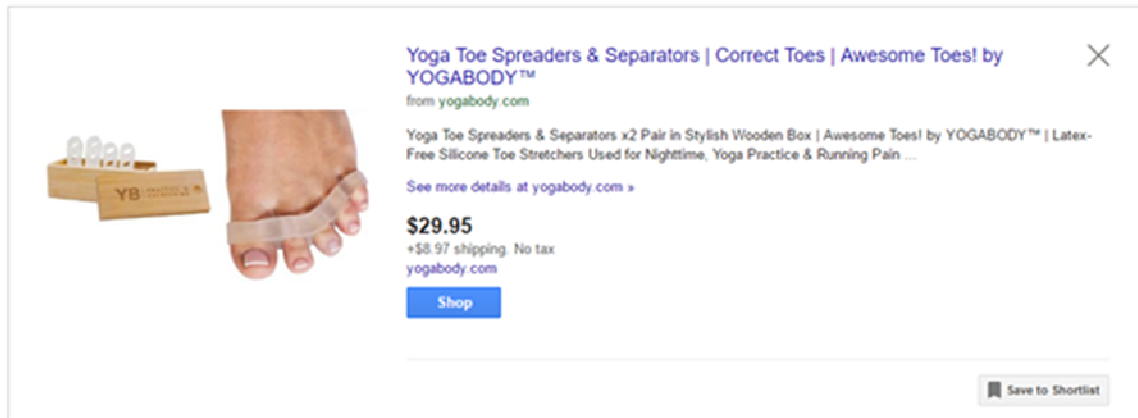
15. YOGABODY promotes and advertises the Awesome Toes! corrective foot spacer product through, *inter alia*, an official video posted on YouTube that features Lucas Rockwood, the founder and Chief Executive Officer of YOGABODY. The YouTube video can be found at <https://www.youtube.com/watch?v=gppEzanzXEc>.

16. The official video posted on YouTube by YOGABODY and advertising the Awesome Toes! corrective foot spacer product includes a banner that reads “Yoga Toe Separators – Awesome Toes by YOGABODY” as shown in the screenshot below.



17. YOGABODY further promotes, advertises, and offers for sale the Awesome Toes! corrective foot spacer product on-line by prominently displaying

the phrase “Yoga Toe Spreaders & Separators” in front of the Awesome Toes! name and the YOGABODY company name. A screen shot of one such on-line listing is shown below.



18. YOGABODY also advertises the Awesome Toes! corrective foot spacer product on its website ([www.yogabody.com](http://www.yogabody.com)) as being “a safe and natural way to reverse years of damage on your feet caused by modern footwear” that is “soft, comfortable, extremely durable and [can] be used in bed, with flip flops, inside wide-toed athletic shoes, and even during yoga practice.”

19. YOGABODY asserts on its website, *inter alia*, that the Awesome Toes! corrective foot spacer product is, in fact, “made with latex free, natural silicone,” as shown below.



20. YOGABODY factually asserts that the Awesome Toes! corrective foot spacer product is made with latex free, natural silicone even though it knows or should know that the product is not made from silicone.

21. Independent laboratory testing procured by FenF reveals that the Awesome Toes! corrective foot spacer product is not made from silicone as advertised by YOGABODY.

**Count I – Infringement of the '636 Registration**

22. FenF repeats and realleges the allegations contained in paragraphs 1 through 21 as if fully set forth herein.

23. YOGABODY is using in interstate commerce, without authorization from FenF, the mark “Yoga Toe” in connection with the marketing, advertising, promotion, and sale of Awesome Toes! corrective foot spacer product.

24. YOGABODY’S use of the mark “Yoga Toe” is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of the Awesome Toes! corrective foot spacer product or as to YOGABODY’S affiliation, connection, approval, sponsorship, or association with FenF.

25. YOGABODY’S actions constitute infringement of FenF’s federally registered trademark for “YOGA TOES” (the ’636 registration) in violation of Section 32(a) of the Lanham Act, 15 U.S.C. § 1114.

26. YOGABODY’S infringing conduct has caused and is continuing to cause damage to FenF’s business, reputation, goodwill, profits, and the strength of FenF’s federally registered “YOGA TOES” trademark.

27. On information and belief, YOGABODY was actively aware of FenF and the ’636 registration when it began promoting, advertising, and selling the Awesome Toes! corrective foot spacer product in interstate commerce, thus rendering YOGABODY’S infringement willful and deliberate.



**Count II – Infringement of the '215 Registration**

28. FenF repeats and realleges the allegations contained in paragraphs 1 through 27 as if fully set forth herein.

29. YOGABODY is using in interstate commerce, without authorization from FenF, the mark “Yoga Toe” in connection with the marketing, advertising, promotion, and sale of Awesome Toes! corrective foot spacer product.

30. YOGABODY’S use of the mark “Yoga Toe” is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of the Awesome Toes! corrective foot spacer product or as to YOGABODY’S affiliation, connection, approval, sponsorship, or association with FenF.

31. YOGABODY’S actions constitute infringement of FenF’s federally registered trademark for “YOGATOES” (the ’215 registration) in violation of Section 32(a) of the Lanham Act, 15 U.S.C. § 1114.

32. YOGABODY’S infringing conduct has caused and is continuing to cause damage to FenF’s business, reputation, goodwill, profits, and the strength of FenF’s federally registered “YOGATOES” trademark.

33. On information and belief, YOGABODY was actively aware of FenF and the ’215 registration when it began promoting, advertising, and selling the Awesome Toes! corrective foot spacer product in interstate commerce, thus rendering YOGABODY’S infringement willful and deliberate.

**Count III – Unfair Competition**

34. FenF repeats and realleges the allegations contained in paragraphs 1 through 33 as if fully set forth herein.

35. FenF’s “YOGA TOES” and “YOGATOES” marks, which have been used in connection with FenF’s YogaToes® product line since at least 2002, is inherently distinctive and has acquired secondary meaning through long and sustained use in interstate commerce and through substantial advertising, promotion, and sales.

36. YOGABODY has used, and is continuing to use, in interstate commerce and without authorization from FenF, the term “Yoga Toe” in connection with the marketing, advertising, promotion, and sale of the Awesome Toes! corrective foot spacer product.

37. YOGABODY’S use of the phrase “Yoga Toe” is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of the Awesome Toes! corrective foot spacer product or as to YOGABODY’S affiliation, connection, approval, sponsorship, or association with FenF.

38. YOGABODY’S actions constitute false designation of origin and false representation in connection with the sale, distribution, and related interstate commercial activity of the Awesome Toes! corrective foot spacer product in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125.

39. YOGABODY’S unfair competition in connection with the use of the term “Yoga Toe” in interstate commerce has caused, is causing, and will continue to cause damage to FenF’s business, reputation, goodwill, profits, and the strength of the “YOGA TOES” and the “YOGATOES” marks.

40. On information and belief, YOGABODY was actively aware of FenF and FenF's “YOGA TOES” and “YOGATOES” marks when it began promoting, advertising, and selling the Awesome Toes! corrective foot spacer product in interstate commerce, thus rendering YOGABODY’S engagement in unfair competition willful and deliberate.

#### **Count IV – False Advertising**

41. FenF repeats and realleges the allegations contained in paragraphs 1 through 40 as if fully set forth herein.

42. YOGABODY has represented, and is continuing to represent, that the Awesome Toes! corrective foot spacer product is made from latex free, natural silicone when in actuality it is not.

43. YOGABODY’s false or misleading description and/or representation of fact regarding the composition of the Awesome Toes! corrective foot spacer product, as used in commercial advertising or promotion, misrepresents the nature, characteristics, and/or qualities of the Awesome Toes! corrective foot spacer product.

44. On information and belief, YOGABODY has known that the Awesome Toes! corrective foot spacer product is not made from latex free, natural silicone, yet has proceeded to misrepresent that fact in commercial advertising and promotion, thus rendering YOGABODY's engagement in false advertising willful and deliberate.

**Prayer for Relief**

WHEREFORE, FenF respectfully requests that this Court enter judgment that:

A. YOGABODY infringes the '636 registration ("YOGA TOES") in violation of 15 U.S.C. § 1114;

B. YOGABODY infringes the '215 registration ("YOGATOES") in violation of 15 U.S.C. § 1114;

C. YOGABODY's use of the term "Yoga Toe" in connection with the Awesome Toes! corrective foot spacer product constitutes unfair competition for false designation of origin and false representation in violation of 15 U.S.C. § 1125;

D. YOGABODY'S representation that the Awesome Toes! corrective foot spacer product is made from latex free, natural silicone, as found in YOGABODY'S commercial advertising and promotion, is false or misleading and, therefore, constitutes false advertising in violation of 15 U.S.C. § 1125;

E. YOGABODY and its officers, directors, agents, servants, employees, attorneys, successors, assigns, and all persons in active concert or participation with it, be preliminarily and permanently enjoined from further acts of trademark infringement, unfair competition, and false advertising;

F. FenF be awarded profits gained by YOGABODY as a result of YOGABODY'S trademark infringement, unfair competition, and false advertising, increased to an amount this Court deems just, pursuant 15 U.S.C. § 1117;

G. FenF be awarded actual damages sustained as a result of YOGABODY'S trademark infringement, unfair competition, and false advertising, increased by up to three times, pursuant 15 U.S.C. § 1117;

H. FenF be awarded costs and any additional damages to which FenF is entitled as a result of YOGABODY's trademark infringement, unfair competition, and false advertising;

I. Declares this case exceptional and awards to FenF its reasonable attorney fees pursuant 15 U.S.C. § 1117; and

J. Awards to FenF such other and further relief as the Court deems necessary, just, and/or proper.

**Jury Trial Demanded**

FenF respectfully demands a trial by jury on all issues triable to a jury.

Respectfully submitted,

Dated: September 26, 2016

By: /s/ Richard W. Hoffmann

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